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12 ENVIRONMENTAL JUSTICE FOUNDATION

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
14

15 MATEEL ENVIRONMENTAL  
16 JUSTICE FOUNDATION,

17 Plaintiff,

18 vs.

19 EUROMARKET DESIGNS, INC.,  
20 d/b/a Crate & Barrel and CB2

21 Defendant.  
22

Case No. CGC 09-494528

**CONSENT JUDGMENT AS TO  
DEFENDANT EUROMARKET  
DESIGNS, INC. dba Crate & Barrel and  
CB2**

**ENDORSED  
FILED**  
San Francisco County Superior Court

APR 28 2010

CLERK OF THE COURT  
BY: \_\_\_\_\_  
Deputy Clerk

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Mateel v. Euromarket Designs, Inc.,  
Case No 494528

CONSENT JUDGMENT (EUROMARKET DESIGNS, INC.)

1 **1. INTRODUCTION**

2 1.1 On or about November 17, 2009, the Mateel Environmental Justice Foundation  
3 (“Mateel”) by its attorneys, the Klamath Environmental Law Center (“KELC”), acting on behalf  
4 of the public interest, filed a complaint for civil penalties and injunctive relief in the Superior  
5 Court for the City and County of San Francisco in the action entitled *Mateel Environmental*  
6 *Justice Foundation v. Euromarket Designs, Inc.*, Case No. CGC 09-494528 against Euromarket  
7 Designs, Inc., d/b/a Crate & Barrel and CB2 (“Euromarket” or “Settling Defendant”). The  
8 complaint in the action alleges, among other things, that Euromarket violated provisions of the  
9 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Section  
10 25249.5, et seq. (“Proposition 65”). In particular, Mateel alleges that Euromarket knowingly  
11 and intentionally exposed persons to lead or lead compounds, which under Proposition 65 are  
12 chemicals known to the State of California to cause cancer and birth defects of other  
13 reproductive harm. The alleged exposure arose through consumer use of beverage dispensing  
14 jars or vessels that incorporate spigots through which the beverages are dispensed (“Covered  
15 Products”) a subset of which utilize spigots that contain lead and/or lead compounds. Mateel  
16 alleges that Settling Defendant marketed Covered Products that utilize leaded brass spigots  
17 without first providing clear and reasonable warnings in compliance with Proposition 65 to such  
18 individuals. This action was filed more than 60 days after Mateel had sent a 60-Day Notice  
19 Letter to Euromarket, the California Attorney General, all California District Attorneys, and all  
20 City Attorneys of each California city with a population exceeding 750,000, providing notice of  
21 these alleged violations. A copy of that 60-Day Notice letter is attached to the complaint in this  
22 action.

23 1.2 Euromarket is a business that employs ten or more persons and markets within the  
24 State of California Covered Products, which are alleged to contain lead and/or lead compounds.

25 1.3 Lead and lead compounds are chemicals known to the State of California to cause  
26 cancer, and lead is a chemical known to the State of California to cause reproductive toxicity  
27 pursuant to Health and Safety Code Section 25249.9. Under certain circumstances, products  
28 containing lead and/or lead compounds that are sold or distributed in the State of California are

1 subject to Proposition 65's warning requirement. Mateel alleges that the Covered Products  
2 manufactured, distributed, sold and/or marketed by the Settling Defendant for use in California  
3 require Proposition 65 warnings.

4       1.4 For purposes of this Consent Judgment, the Parties stipulate that this Court has  
5 jurisdiction over the allegations of violations contained in the 60-Day Notice Letter and the  
6 Complaint, as well as personal jurisdiction over the Settling Defendant as to the acts alleged in  
7 the 60 Day Notice Letter and the Complaint; that venue is proper in the City and County of San  
8 Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
9 settlement and resolution of the allegations made against the Settling Defendant contained in the  
10 60 Day Notice Letter and Complaint and of all claims that were or could have been raised  
11 against the Settling Defendant based on the facts alleged therein or arising therefrom.

12       1.5 This Consent Judgment resolves claims that are denied and disputed. The Parties  
13 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
14 between the Parties for the purpose of avoiding prolonged litigation. This Consent Judgment  
15 shall not constitute an admission with respect to any allegation made in the 60 Day Notice Letter  
16 or Complaint, most of which allegations Settling Defendant denies, nor may this Consent  
17 Judgment or compliance with it be used as an admission or evidence of any fact, wrongdoing,  
18 misconduct, culpability, violation of law or liability on the part of the Settling Defendant.  
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20 **2. SETTLEMENT PAYMENT**

21       2.1 The Settling Defendant shall pay an offset payment of \$10,000.00 to the  
22 Ecological Rights Foundation and an offset payment of \$10,000.00 to the Californians for  
23 Alternatives to Toxics for work informing California consumers about the hazards of and  
24 exposures to toxic chemicals and for work to reduce exposures to and pollution from toxic  
25 chemicals. Ecological Rights Foundation and Californians for Alternatives to Toxics are  
26 California non-profit environmental organizations that advocate for consumers' safety, and for  
27 awareness and reduction of toxic exposures. These payments shall be made no later than ten  
28 (10) days after judicial approval of this [Proposed] Consent Judgment.

1           **2.2** Euromarket shall pay \$40,000 to KELC to cover a portion of Mateel's attorneys'  
2 fees and costs. This payment shall be made no later than ten (10) days after judicial approval of  
3 this [Proposed] Consent Judgment.

4           **2.3** All payments referenced in Sections 2.1 and 2.2 shall be made by check, payable  
5 to the above specified recipient and sent so as to reasonably guarantee timely delivery to  
6 William Verick, Klamath Environmental Justice Foundation, 424 First Street, Eureka, CA  
7 95501, to be distributed within a commercially reasonable time by Mr. Verick to the ultimate  
8 recipients. The Parties acknowledge and agree that, except as provided in Section 2.2 of this  
9 Consent Judgment, each party shall bear its own costs, expenses, consultant and expert fees, and  
10 attorneys' fees.

11  
12 **3.     ENTRY OF CONSENT JUDGMENT**

13           **3.1** The Parties hereby request that the Court promptly enter this Consent Judgment.  
14 Upon entry of this Consent Judgment, the Parties waive their respective rights to a hearing or  
15 trial on the allegations of the Complaint.

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17 **4.     MATTERS COVERED BY THIS CONSENT JUDGMENT**

18           **4.1** As to alleged exposures to lead and lead compounds caused by the Covered  
19 Products, this Consent Judgment is a final and binding resolution between Mateel, acting for  
20 itself and on behalf of the public interest, and the Settling Defendant of any alleged violation of  
21 Proposition 65 or the regulations promulgated thereunder to the fullest extent such violations  
22 were asserted or could have been asserted against the Settling Defendant based upon, arising out  
23 of, or relating to the Settling Defendant's compliance with Proposition 65 or regulations  
24 promulgated thereunder with respect to the Covered Products sold to California consumers,  
25 whether based on actions committed by the Settling Defendant or by any other entity involved in  
26 the manufacture, distribution and/or retail sale of the Covered Products, including but not  
27 limited to parents, subsidiaries or affiliates, predecessors, officers, directors, employees of the  
28 Settling Defendant and all customers, vendors, suppliers, manufacturers, distributors,

1 wholesalers, retailers or any other person in the course of doing business that manufactured,  
2 distributed or sold the Covered Products. As to alleged exposures to lead and lead compounds  
3 from Covered Products, compliance with the terms of this Consent Judgment resolves any issue,  
4 now and in the future, concerning compliance with Proposition 65 by the Settling Defendant and  
5 its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all  
6 customers, vendors, suppliers, manufacturers, distributors, wholesalers, retailers or any other  
7 person in the course of doing business involving the Covered Products, and the successors and  
8 assigns of any of them.

9       **4.2** As to exposures to lead and lead compounds alleged to be caused by the Covered  
10 Products, Mateel, acting on behalf of itself and on behalf of the public interest, and Mateel's  
11 agents, successors and assigns, waives all rights to institute any form of legal action and releases  
12 all claims which were or could have been brought against the Settling Defendant and its parents,  
13 subsidiaries or affiliates, predecessors, officers, directors, employees, and all customers,  
14 vendors, suppliers, manufacturers, distributors, wholesalers, retailers or any other person in the  
15 course of doing business involving the Covered Products and the successors and assigns of any  
16 of them. In furtherance of the foregoing, Mateel, acting on behalf of itself, hereby waives any  
17 and all rights and benefits which it now has, or in the future may have, conferred upon it with  
18 respect to lead exposures alleged to be caused by the Covered Products by virtue of the  
19 provisions of Section 1542 of the California Civil Code, which provides as follows:

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22           **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
23           WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
24           EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE  
25           RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
26           MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
27           DEBTOR."**

28 Mateel understands and acknowledges that the significance and consequence of this waiver of  
California Civil Code Section 1542 is that even if Mateel has future claims arising out of or  
resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, it

1 will not be able to pursue that claim against the Settling Defendant, its parents, subsidiaries or  
2 affiliates, predecessors, officers, directors, employees, and all customers, vendors, suppliers,  
3 manufacturers distributors, wholesalers, retailers or any other person in the course of business  
4 involving the Covered Products. Furthermore, Mateel acknowledges that it intends these  
5 consequences for any such claims which may exist as of the date of this release but which  
6 Mateel does not know exist, and which, if known, would materially affect its decision to enter  
7 into this Consent Judgment, regardless of whether its lack of knowledge is the result of  
8 ignorance, oversight, error, negligence, or any other cause.

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10 **5. ENFORCEMENT OF JUDGMENT**

11 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties  
12 hereto.

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14 **6. MODIFICATION OF JUDGMENT**

15 6.1 This Consent Judgment may be modified only upon written agreement of the  
16 Parties and upon entry of a modified Consent Judgment by the Court, or upon motion of any  
17 party as provided by law and upon entry of a modified Consent Judgment by the Court.

18  
19 **7. INJUNCTIVE RELIEF**

20 7.1 Euromarket agrees that it has discontinued and will no longer offer for sale into  
21 California any Covered Products that use leaded brass spigots, including those specifically  
22 identified in the 60 Day Notice letter attached to the Complaint in this action. Euromarket  
23 represents that it is not aware of any other beverage dispenser which it continues to sell to  
24 California consumers that also uses a leaded brass spigot for dispensing drinking liquids.

25 7.2 Euromarket agrees that if after the date of entry it sells any Covered Products,  
26 those Covered Products will not utilize any material that contains intentionally added lead if in  
27 the normal intended use of the Covered Product that material contacts any food or beverage  
28 dispensed from the Covered Product.

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2 **8. NOTICE**

3 **8.1** When any party is entitled to receive any notice or report under this Consent  
4 Judgment, the notice report shall be made in writing and sent via U.S. Mail or other manner of  
5 overnight delivery to the following:

6 (a) for Mateel: William Verick, Esq., Klamath Environmental Justice Foundation,  
7 424 First Street, Eureka, CA 95501;

8 (b) for Euromarket; Vicki Donati, Esq. Euromarket Designs, Inc. d/b/a Crate &  
9 Barrel, 1250 Techny Road, Northbrook, IL 60062, with a copy to Judith Praitis, Esq. Sidley  
10 Austin, LLP, 555 West 5<sup>th</sup> Street, Los Angeles, CA 90013.

11  
12 **9. AUTHORITY TO STIPULATE**

13 **9.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
14 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf  
15 of the party represented and legally to bind that party.

16  
17 **10. RETENTION OF JURISDICTION**

18 **10.1** This Court shall retain jurisdiction to implement the Consent Judgment.

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20 **11. ENTIRE AGREEMENT**

21 **11.1** This Consent Judgment contains the sole and entire agreement and understanding  
22 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
23 negotiations, commitments and understandings related hereto. No representations, oral or  
24 otherwise, express or implied, other than those contained herein have been made by any party  
25 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
26 deemed to exist or to bind any of the Parties.

1 **12. GOVERNING LAW**

2 12.1 The validity, construction and performance of this Consent Judgment shall be  
3 governed by the laws of the State of California, without reference to any conflicts of law  
4 provisions of California law.  
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6 **13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

7 13.1 Mateel agrees to comply with Health & Safety Code § 25249.7(f)'s reporting form  
8 and approval requirements and as implemented by various regulations.  
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10 **14. EXECUTION IN COUNTERPARTS**

11 14.1 This Consent Judgment may be executed in counterparts and/or by facsimile,  
12 which taken together shall be deemed to constitute one original document.  
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14 **15. COURT APPROVAL**

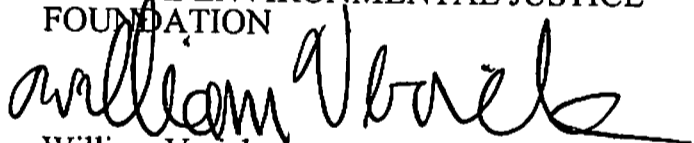
15 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or  
16 effect, and cannot be used in any proceeding for any purpose.  
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20 **IT IS SO STIPULATED:**

21 Dated:

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION



William Verick  
CEO Mateel Environmental Justice Foundation,  
Klamath Environmental Law Center



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Dated: MARCH 9, 2010

EUROMARKET DESIGNS, INC., dba Crate & Barrel and CB2

*Victoria L Donati*

By: VICTORIA L DONATI  
Its: GENERAL COUNSEL & CORPORATE SECRETARY

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

APR 28 2010

A. JAMES ROBERTSON, II

JUDGE OF THE SUPERIOR COURT